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Decision

Matter of: ACH Food Companies, Inc.

File: B-286794

Date: February 12, 2001

Walter A. I. Wilson, Esq., and Lawrence M. Prosen, Esq., Bell, Boyd & Lloyd, for the protester.

Michael Gurwitz, Esq., United States Department of Agriculture, for the agency.
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In procurement for ready-to-eat fortified cereals for use in the Food and Nutrition Service domestic feeding programs, solicitation requirement that a specific manufacturing process be used and that the product being delivered be a commercially-labeled product and have a history of successful distribution, use, and consumer acceptance in domestic commercial channels is not unduly restrictive where record demonstrates that the requirements reasonably reflect agency needs to obtain product acceptable to cereal recipients.

DECISION

ACH Food Companies, Inc. protests the terms of invitation for offers No. 550, issued by the United States Department of Agriculture (USDA). This invitation seeks offers subject to the terms and conditions of Fortified Cereals Announcement FC6, as amended, for the purchase of ready-to-eat (RTE) fortified cereals for use in the Food and Nutrition Service (FNS) domestic feeding programs. The protester objects to the prohibition on the use of the expanded/extruded manufacturing/cooking process for certain cereals (corn flakes, bran flakes, and rice crisps) and the requirement that

vendors provide commercially-labeled products that have a history of successful distribution and use in domestic commercial channels.¹

We deny the protest.

The FNS domestic feeding programs that use the cereals are the Commodity Supplemental Feeding Program, the Emergency Food Assistance Program, and the Food Distribution Program on Indian Reservations. Contracting Officer's (CO) Statement at 1. These programs provide food for all age groups, from the very young to the elderly. The types of cereals currently purchased for these programs are corn flakes, corn squares, crisp rice, oat circles, and wheat bran flakes. Invitations requesting offers for the cereals have been issued every 3 months since October 4, 1996, with the option to furnish the product in either a USDA-labeled package or a commercially-labeled package. Id.

The agency reports that since early 1999, it has received complaints that the protester's cereal was hard, did not soften in milk, and tasted bland. Id. at 2. Due to the complaints, the agency evaluated all cereal products provided under the feeding programs for feedback and participant acceptability. Id. at 3. The agency conducted a review of the complaints, and issued a report, "Review of Ready-To-Eat Cereals Procured for Domestic Household Food Assistance Programs, Summer 2000" (referred to in the record as the Ramsey Report). This report reviewed the complaints and verified that there was a "significant level of dissatisfaction with some of the cereal provided, in particular [ACH's] product." AR, Tab 8, Ramsey Report at 11. Among the report's recommendations was that the agency require that "only commercial labeling be allowed for RTE cereals. This simple step would change the perception that commodity cereals are somehow different or lesser quality than cereal in the retail grocery stores." Id.

The agency also evaluated the requirements of Announcement FC6 and conducted market research. CO Statement at 3. The agency subsequently decided to specify the technical manufacturing process known as the "batch process" in the solicitation because this change to the specifications would address the hardness and other cereal quality issues associated with ACH's products. The agency's conclusion was based on information on cereal manufacturing processes contained on an Internet

¹ The extrusion manufacturing process is a single-step continuous process for cooking and shaping the product. Only light toasting and optional coating are needed after extrusion. In contrast, under the batch manufacturing process, the product is steam-cooked for 1 to 2 hours along with any other ingredients in a steam-heated rotating pressure cooker. Agency Report (AR), Tab 10, Internet Market Research, at 1.

site of a professor from Cornell University's Department of Food Science. As relevant here, the site discusses the extrusion and batch processing methods for producing cereals and states as follows:

It appears that at present the continuous extrusion process may offer some economic advantages, while the conventional batch process results in a superior product. You can probably test this for yourself by taste testing a generic store brand cornflake, which is probably extruded and a Kellogg's cornflake, which is batch cooked. Notice the color, texture, and surface blistering of the products. You probably also notice that either one of these becomes fairly soggy in milk in a matter of seconds. However, consumers can apparently detect the difference.

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It is also important to note that the longer cooking times of these type processes [the batch processes] allows for flavor development, which is difficult to duplicate in the shorter extrusion cooking processes.

AR, Tab 10, Internet Market Research, at 5.

The agency also noted the following from its research:

The distinct flavor is produced by certain chemical reactions due to a longer cooking time in the batch method that is extremely difficult to match using the extrusion method. Also, the batch method produces a thin flake with a blistered appearance while being toasted. This characteristic also produces a tender and crisp flake.

AR, Tab 13, Letter to ACH from Agency, Oct. 13, 2000, at 2.

The agency adopted the Ramsey Report recommendation that in order to address customer acceptability and, more specifically, recipient perception that they are receiving an inferior product, offers would be accepted only from manufacturers that sold the cereal product commercially and had a history of successful distribution and use in the domestic commercial channels. The product received would then be one that the recipient could identify with cereals sold in local food stores. Id. Consequently, amendment No. 6 to Announcement FC6 was issued on September 11, 2000, announcing the new cereal requirements.

On November 3, 2000, the solicitation at issue here was issued pursuant to Announcement No. FC6, as amended, to purchase fortified cereals under a fixed-price, indefinite-quantity contract for use in the domestic feeding programs.

The delivery period was to be from January 1, 2001 through March 31, 2001. Offers were to be submitted by November 13, 2000. Offers were received from three vendors, including ACH. ACH submitted an offer for corn flakes, corn squares, crisp rice, oat circles, and wheat bran. ACH's offer was rejected because it failed to meet the manufacturing and commercial-label/distribution requirements. ACH maintains that the exclusion of the "extrusion" manufacturing process and the requirement for a commercial product unduly restrict competition.

The determination of a contracting agency's needs and the best method for accommodating them are matters primarily within the agency's discretion. Systems Application & Techs., Inc., B-270672, Apr. 8, 1996, 96-1 CPD ¶ 182 at 3. However, where a protester challenges a requirement as unduly restrictive of competition, we will review the record to determine whether the restriction imposed is reasonably related to the agency's needs. Id. The adequacy of the agency's justification is ascertained through examining whether the agency's explanation is reasonable, that is, whether the explanation can withstand logical scrutiny. R. R. Mongeau Eng'rs, Inc., B-218356, B-218357, July 8, 1985, 85-2 CPD ¶ 29 at 2. In this regard, specifications for the use of particular products may be justified, for example, where the record demonstrates that they are necessary to ensure adequate performance or that a particular design is reasonably related to the agency's aesthetic needs. See Dixon Pest Control, Inc., B-248725, Aug. 27, 1992, 92-2 CPD ¶ 132 at 3.

The protester basically argues that the small number of complaints did not justify the agency's complete re-evaluation of its RTE cereal program, given the significant number of boxes of cereal it sells to the agency. The protester specifically states, "Clearly, without further explanation, such a determination is not supported merely by the specific complaints of 6 to 8 people, second- and third-hand complaints collected and forwarded without specificity and identifying support, and various trade articles from self-interest companies and direct competitors of Protestor." Protester's Comments to Agency Report at 6.

We think the agency acted reasonably here. The record shows that the agency received specific complaints that provided sufficient notice of dissatisfaction with the protester's product to justify an examination of its RTE cereal program and ultimately to justify the revisions to the solicitation. As the protester concedes, there were a number of written complaints about ACH's cereal. Further, the record shows that the agency received a compilation of complaints from local program officials covering the past three years. The complaints were consistent with the individual written complaints the agency received. The compilation included the following comments:

[S]tates curtail orders of cereals when they discover that the vendor is [ACH] . . . due to recipients' dislike of [ACH] cereals.

A blind taste test by [agency] staff earned [ACH] cereals . . . a near-unanimous thumbs-down on flavor, texture, and softening in milk.

[The cereal is] hard to chew, does not soften in milk, differs in color from commercial counterparts, and tastes generally bland.

[The] commercial label cereal is popular and preferred, while . . . USDA label cereal is unpopular and unwanted.

AR, Tab 7B, Cereal Complaints E-Mail.

Further, the author of the Ramsey Report reviewed the complaints and conducted her own cereal survey. The report confirmed recipient dissatisfaction with ACH cereal and noncommercially-labeled products. While the protester asserts that the report was also based on the same unsubstantiated and limited number of complaints and that the survey as conducted was flawed, we conclude that the Ramsey Report provided reasonable evidence of dissatisfaction with ACH's cereal within the program. Contrary to the protester's view, we think the negative information conveyed to the agency concerning ACH's product provided a reasonable basis for the agency's actions. This information showed that cereal recipients were dissatisfied with ACH's cereal product because the product was hard, bland, and did not soften in milk. The agency information also indicated that when given a choice the recipients preferred commercial cereals.

The record also shows that, based on its own research, the agency determined that the batch process would produce a higher quality cereal that would address recipients' complaints concerning the ACH product. The protester does not appear to disagree that the batch process may produce a higher quality cereal, and on this record, we think the agency had reasonable support for its decision to exclude cereals using the extrusion process. Here, in these circumstances involving aesthetics such as taste, appearance, and texture, we think the agency may specify a manufacturing process that addresses these concerns. See Southwest Decor, Inc., B-246964 et al., Apr. 20, 1992, 92-1 CPD ¶ 373 at 4.

Similarly, we have no basis to object to the agency's decision to require commercial packaging. The requirement is logically related to the agency's goal of increasing the acceptability of the cereal products for the recipients. AR, Tab 13, Letter to ACH from Agency (Oct. 13, 2000). This requirement addresses the perception that the agency-labeled cereal is a lesser quality product than the commercial cereal sold in retail food stores. In any event, the protester specifically states that it has a long history of selling certain of its RTE cereal brands to commercial establishments under the brand names "Perky's Nutty Rice" and "Perky's Nutty Corn." Protest at 3. Consequently, it would appear that the protester could meet the commercial-labeling packaging requirement.

On this record, we conclude that the agency's revisions to the announcement were reasonably justified based on a legitimate agency need to obtain cereal for distribution that is acceptable to program recipients.

The protest is denied.

Anthony H. Gamboa
Acting General Counsel